

January 31, 2012

Donald J. Krouse, Vice President
Morongo Basin Democratic Club
P O Box 1271
Joshua Tree, CA 92252

Re: Your Request for Advice
Our File No. I-11-220

Dear Mr. Krouse:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).¹ This letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your question seeks general guidance, we are treating your request as one for informal assistance.²

QUESTION

Is the Morongo Basin Democratic Club (the “MBDC”) a “committee” under the Act subject to the campaign reporting provisions?

CONCLUSION

Based upon the facts you have provided, it appears that the MBDC has accepted payments of \$1,000 or more for political purposes and qualifies as a committee under the Act.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS

The Morongo Basin Democratic Club (the “MBDC”) is a relatively new group of concerned Democrats based in San Bernardino County’s Morongo Basin. After achieving the minimum required number of members, the MBDC received club charter through the San Bernardino Democratic Central Committee (the “SBDCC”). The MBDC pays dues to the SBDCC, has implemented its own by-laws, and has been issued a tax identification number from the Internal Revenue Service.

Members of the MBDC pay modest dues under the club’s bylaws. Funds are also collected through fundraisers. For instance, the MBDC has previously charged a fee for admission to a club event featuring a guest speaker promoting his book. Funds raised through membership dues and fundraisers pay for expenses such as the MBDC’s Post Office Box, bank check fees, a professionally produced club banner, business cards, a website, expenses related to holding club meetings, and mailings of the club’s endorsements to both members and other nonmember registered voters.

Additionally, members of the MBDC frequently volunteer their time to specific candidates running for state and local offices and may also volunteer for state initiative campaigns. Volunteers report back to the MBDC and may encourage other members to support specific candidates or initiatives. The MBDC encourages members to make phone calls to registered voters. The MBDC also participated in community events by setting up a voter registration table. While the club permits any person to register regardless of party affiliation, the club often distributes information from selected campaigns during these events. In some instances, the club has paid up to a \$25 fee to set up a table.

The MBDC currently has more than \$3,000 in its checking account. These funds are earmarked for club activity and may be used to rent office space for the month leading up to the next general election. While the office space will primarily be used for “get out the vote” phone calling and canvassing efforts, selected candidates would be allowed to display their literature in the office as well. In addition, the date for club membership renewal dues is approaching, and the MBDC will soon be collecting additional funds to add to its bank account.

ANALYSIS

The campaign disclosure provisions of the Act require “committees” to file a statement of organization and periodic reports disclosing contributions received and expenditures made. (Section 84100 *et seq.*) Pursuant to Section 82013, a “committee” is any person or organization that receives contributions totaling \$1,000 or more in a calendar year for political purposes, makes independent expenditures totaling \$1,000 or more in a calendar year, or makes contributions of \$10,000 or more in a calendar year. To the extent contributions received, contributions made, or independent expenditures exceed the thresholds qualifying the MBDC as a committee under Section 82013, the MBDC must file a statement of organization and periodic campaign reports as required by the Act.

More specifically, the MBDC qualifies as a committee if it has received \$1,000 in contributions for political purposes, including receiving funds to make contributions to or independent expenditures on state and local candidates and ballot measures or to conduct partisan voter registration or get-out-the-vote activities. (See *In re Welsh* (1978) 4 FPPC 78 and *Szczepaniak* Advice Letter, No. I-91-542.)

A “contribution” is “any payment made for political purposes for which full and adequate consideration is not made to the donor.” (Regulation 18215(a); also see Section 82015.) A payment is made for political purposes if it is made “for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure” or is received by or made at the behest of a candidate, controlled committee, an official committee of a political party, or an organization formed primarily for a political purposes. (Regulation 18215(a)(1) and (2).)

An “independent expenditure” is defined as:

“[A]n expenditure made by any person...in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.” (Section 82031.)

However, pursuant to pertinent parts of Regulation 18215 (copy enclosed), the term “contribution” does not include any of the following:

“(1) An expenditure made at the behest of a candidate in connection with a communication directed to voters or potential voters as part of voter registration activities or activities encouraging or assisting persons to vote, if the expenditure does not constitute express advocacy.

“(2) Volunteer personal services or payments made by a person for his or her own travel expenses, if such payments are made voluntarily without any understanding or agreement that he or she will be repaid.

[¶]

“(4) A payment made at the behest of a candidate, which is for a communication by the candidate or any other person, that meets all of the following:

“(i) Does not contain express advocacy;

“(ii) Does not make reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for office; and

“(iii) Does not solicit contributions to the candidate or to third persons for use in support of the candidate or in opposition to the candidate's opponent.”

Based on the facts you have provided, some of the payments for activities you have identified may constitute contributions to other candidates or committees, if made at their behest, or independent expenditures.³ For example, payments to send letters of the MBDC's endorsements and educational materials related to candidates and ballot measures to individuals who are not members of the club⁴, payments to rent a table at a public event to register voters while simultaneously providing information regarding candidates and ballot measures, and payments for the rental of office space during the month leading up to the next general election from which the MBDC intends to display and distribute campaign related materials all constitute contributions if the payments are made at the behest of a committee or organization formed or existing primarily for a political purpose.

If made at the behest of a candidate, the foregoing payments constitute contributions to the candidate if the materials distributed contain express advocacy; refers to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for office; or solicits contributions to the candidate or to third persons for use in support of the candidate or in opposition to the candidate's opponent. Finally, in the event that the payments will not be made at the behest of a candidate or committee, but will be used to distribute materials containing express advocacy, the payments will constitute independent expenditures.⁵

Nonetheless, you have not provided sufficient facts for us to determine whether any of the payments outlined above constituted a contribution or an independent expenditure, or the amount of any particular payment. Thus, we are unable to determine whether the MBDC has

³ A payment is “made at the behest” of a candidate or committee if the payment is “made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of” the candidate or committee.” (Regulation 18225.7(a).)

⁴ Payments for communications supporting or opposing candidates to dues paying members of the MBDC are not contributions or expenditures so long as the payments are not made for general public advertisements. (Section 85312.)

⁵ “A communication ‘expressly advocates’ the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains words of advocacy such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot,’ ‘vote against,’ ‘defeat,’ ‘reject,’ ‘sign petitions for’ or, within 60 days prior to an election in which the candidate or measure appears on the ballot, the communication otherwise refers to a clearly identified candidate or measure so that the communication as a whole unambiguously urges a particular result in an election.” (Regulation 18225(a)(2).) “[A] communication, taken as a whole, unambiguously urges a particular result in an election if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure.” (Regulation 18225(a)(2)(A).)

accepted payments of \$1,000 or more to make contributions or independent expenditures. More definitively, the MBDC has paid fees of up to \$25 to set up tables to conduct voter registration while simultaneously handing out campaign materials and may use approximately \$3,000 dollars of the committee's funds to rent an office space for the month preceding the general election to conduct get-out-the-vote phone calling and to display and distribute campaign materials. Because these activities constitute partisan voter registration and get-out-the vote activities by the MBDC, it appears that the MBDC has accepted payments totaling \$1,000 or more in a calendar year for a political purpose and, therefore, qualifies as committee pursuant to Section 82013(a).

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Brian G. Lau
Counsel, Legal Division

BGL:jgl

Enclosure